Green, James S. Hon.

Speech ... on the constitution of Canada ...

Washington, 1857

SPEECH

OF

HON. J. S. GREEN, OF MISSOURI,

ON

THE CONSTITUTION OF KANSAS;

DELIVERED

IN THE SENATE OF THE UNITED STATES, DECEMBER 16, 1857.

WASHINGTON:
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1857.

THE PRESIDENT'S MESSAGE—KANSAS.

The Senate having, on motion of Mr. BROWN, resumed the consideration of the motion to print the President's message and accompanying documents—

Mr. GREEN said: Mr. President, when, on Wednesday last, the honorable Senator from Illinois [Mr. DOUGLAS] addressed the Senate, I was taken completely by surprise. I was surprised not only that he should have made his remarks at that time, but I was still more surprised at the manner and the matter of the speech. He himself stated, if I recollect correctly, that the President had made no recommendation on the subject of Kansas. It is a fact known by us all that no application on the part of Kansas was before Congress in any shape. If, therefore, there was neither an executive recommendation nor an application upon the part of Kansas, wherefore should the subject have been thrust on the attention of the country? When practical action is required on the part of Senators, the views of Senators are expected to be elicited; but when neither an executive recommendation required any practical action, nor any application on the part of Kansas had been made, it seemed to me most extraordinary that we should be compelled to engage in an abstract discussion with no reference to practical results. It is not my purpose to inquire into the motive of the honorable Senator. I am willing to concede, as I do, that it was patriotic; but I must think it very improper. It was well calculated to prejudice the question now pending before the people of Kansas. An election is to be held on the 21st of this month, and the public mind was prepared to see the people go forward and express their preferences for and against, as the question may be presented to them; but his speech, going as a counter manifesto to the just and fair message of the Executive of this Government, is well calculated, though no doubt not designed, to prejudice the question before the people of Kansas, as well as before the people of the country.

But, sir, whether this question has been rightfully or wrongfully brought up for consideration, it is now before us; and justice to the Executive, justice to the question itself, justice to the people of Kansas, and justice to my own State, which cannot fail to feel a deep interest in the proper adjustment and final settlement of the question, require that I should meet, and, as far as I may be able, counteract the positions assumed by the honorable Senator from Illinois.

The honorable Senator from Illinois sets out with imputing to the President a "*fundamental error.*" Before we can discuss, we must have the issue presented. Before our arguments can have a practical bearing on the question before the Senate, it is necessary that we should understand what that question is. In what, according to the positions assumed by the Senator from Illinois, does this "fundamental error" consist? I understand him to say that the "fundamental error" into which he charged the President with having fallen, is that the President says there was no law either in the Kansas-Nebraska act, in the Constitution of the country, or in the common usages of the Government, that made it obligatory on the convention of Kansas to submit their constitution to a subsequent vote of the people. This is the imputed "*fundamental error.*" To that point I shall direct the attention of the Senate.

It is not for me to say whether the propriety of the submission of the slave branch of that constitution to a separate vote, ought to have been considered by the Executive or not. I choose not to trace him in the course of his reasoning on the subject. I choose rather to notice the *conclusion* at which he has arrived—a conclusion that promises a full adjustment of this whole question; that promises peace to the country; that promises satisfaction to the North and to the South; and that promises to remove a bone of contention over which the public mind has been too much harassed for the last several years.

The real practical question, then, which we have to consider is this: ought Kansas, when her constitution shall be presented, be admitted into the

Union? or ought the consideration of what the honorable Senator from Illinois calls a "fundamental error" of the President, to be deemed a sufficient reason to keep Kansas out of the Union, and to keep this most unfortunate subject still agitating the public attention? *This is the real issue.* It is not whether we approve of parts of the constitution of Kansas: it is not whether we think the qualification required by the convention in framing the constitution of Kansas, of twenty years' citizenship of the United States in order to be Governor, is right. That is a subject upon which the people of Kansas alone have the right to decide.

It is true the honorable Senator does not say that we have a right to supervise the action of the convention of Kansas in that regard. But he seems to bring up what he regards as objectionable parts of their constitution, and traces them in such a manner that the public might be prejudiced against the result of the labors of the convention. In his great anxiety to so present that feature in regard to the qualification which the Governor of Kansas is required to possess, he even misstates and misconstrues the constitution of Kansas as presented before us. He says "twenty years' citizenship is required." That is true; but is that a cause of objection? The Senator's own State of Illinois, when she was admitted into the Union, required as a qualification of the Governor that he should have been THIRTY YEARS a citizen of the United States; and surely he will not invoke the application of a more rigorous rule to Kansas, which, under the peculiar circumstances of the case, requires rather a relaxation for the sake of peace and quietude. Surely he will not object to the application of the same liberality to Kansas, so as to leave that question unprejudiced; for if Illinois could come into the Union with a constitution requiring the Governor to be a citizen for the space of thirty years, surely it is no insuperable objection to Kansas that she requires only a twenty years' citizenship. So with the State of Missouri—my own State. Her constitution requires the Governor to be a native-born citizen of the United States; and so it is with various other States. The constitution of the State of Mississippi requires twenty years' citizenship of the United States on the part of the Governor; and a large number of the constitutions of the States require them to be native born. The Constitution of the United States requires the President to be a native-born citizen of the United States.

I refer to these facts for the purpose of showing that, in all times past, such a matter has never been urged on the Senate as any reason why the application of a State for admission into the Union ought to be rejected. Perhaps the Senator will say, however, that he did not urge it in that view, and that he only stated that the people should have a right to pass on that question. I shall advert to that point after a while. In the same connection, however, he uses this language, which an examination of the constitution does not warrant:

"If men think no person should vote or hold office until he has been here twenty years, he has a right to think so."

The employment of this language on the part of the Senator induces those who have not examined the constitution of Kansas, to believe that it requires twenty years' citizenship before the right of voting can attach. The Senator has fallen into an error. The constitution simply requires for the exercise of the right of suffrage in Kansas, that a person shall be a citizen of the United States, and a free white male inhabitant of the State. If this were to go broadcast through the land, those who object to the stringent rules which the party to which he referred sometimes have been held to advocate, would feel greatly prejudiced against the Kansas constitution; while, if they examine it, and see what its provisions are, they will find that the Senator has misstated its provisions.

So on other questions—the subject of banks, and the mode of taxation. He animadverted on all these points with pleasure, and with a view, as it would seem, (though doubtless for no such purpose,) at least to point out objections in the Kansas constitution, on the subject of banks, as well as on the subject of taxation. Now if he concedes, as I know he will concede, that Congress has no right to consider any of the features of the constitution of a State save whether it be republican, why need he dwell on anything else? It would, if he regarded it as obnoxious, connected with the powerful influence of that distinguished character which he possesses, spread a prejudicial influence abroad on a subject which he admits he has no right to consider in the Senate of the United States.

So with regard to one other branch of his argument. The ordinance that accompanies the constitution is held by some to be extravagant in its demands on the Federal Government. It may or may not be so. Whether it be right to accede to the proposition submitted in the shape of an ordinance or not, I shall not now stop to discuss; for I hold that it is no part of the constitution of Kansas. It is a separate proposition presented by the convention of Kansas, and it is matter of contract with the Federal Government whether we accede to it or not. We may disaffirm that contract. In other words, it is a *proposition*, and we may make a counter-proposition. It is a matter for consideration, for adjustment; and it is no branch or part of the constitution of the State.

The question which we have to consider is, not the qualification required in the Kansas constitution for Governor; not the mode in which the elective franchise is to be exercised; not the provisions in regard to banks; not the provisions with regard to the mode of taxation. These are all subjects with which we have nothing to do. They exclusively pertain to the people of Kansas. This they have, through their convention, decided for themselves.

There is but one single legal question to which our attention can be directed; is it a "republican" form of government? As it respects the numbers requisite to entitle the people of Kansas to admission into the Union, I believe it has never been called in question. Certainly the Senator from Illinois has not called it in question, and I have not heard it called in question by any other Sen-

ator. I do not understand the Senator from Illinois to say that the constitution of Kansas is not "republican." On the contrary, I have no doubt of the fact that all will admit it to be as republican as the constitution of any State in the United States; as consonant with the principles of republicanism as any constitution that has ever been presented to the American people. If it comes before us in that shape—admitted to be republican—admitted to have a sufficient population to entitle them to admission—admitted that the peculiar features of the constitution are questions with which we have no concern, wherefore is it that the admission of the State into the Union is to be resisted and opposed? For what purpose? What reason is to be assigned?

The first reason that is assigned is, that there is no "*enabling act.*" Mr. President, there seems to be a want of clear understanding of the relation which the Federal Government sustains to the Territories. What is an "enabling act?" Is it to impart power to the people of a Territory? for we must remember that a Territory organized, constitutes a people. Individuals may live on the lands belonging to the United States, and yet not be a people. They are individuals scattered over the land; but in a technical and appropriate and governmental sense, whenever they are organized into a political community they constitute a people. Kansas is a political community and a people. What "enabling act" was required to impart to them the power to propose a change in their form of government? What enabling act can give them more political and inalienable rights than they already possess? It would be a solecism, a contradiction, to assert it. Among the inalienable rights are "life, liberty, and the pursuit of happiness, to secure which governments are instituted, deriving their just powers from the consent of the governed." Who are the "*governed?*" The people of Kansas. From whom, then, will the government of the State of Kansas derive its just powers? From the "*governed,*" and not from your "enabling act." Their power was *inherent,* and all the action of the Federal Government can give them no additional political power. That inherent power is incapable of transfer; it is unchangeable; it is indefeasible; it is original. What then? Does it follow that the people in an organized or unorganized shape, living in a Territory, can set up an independent government when they please? No; I answer most emphatically, no. They may *propose* their form of government; they may shape its features; they may parcel out its powers; they may guard the rights and interests of the people under the newly *proposed* government; but they cannot become an absolute sovereignty; they cannot become an absolute independent State. Why? Because the Territory belongs to the Federal Government for the use of all the States. Nothing but the assent of the Federal Government in some manner, shape, or form, will ever impart to them independence and sovereignty. The only purpose of an "*enabling* act" to an organized Territory ought simply to be *a law of* ASSENT. If it is but an *unorganized* Territory, and not a "people," Congress then ought to throw them into an organic shape, as well as give its assent. This will be found to be the true principle, and ought to be the rule to regulate the steps of this Government in its dealings with the Territories. States come into the Union by their own will, and with the assent of the United States.

All the power of the Federal Government cannot create an independent sovereign State. The power of this Federal Government is not to create, but to admit. To "admit" a State, implies its existence prior to admission. Thus, what is now ordinarily called an "enabling act," is, to all intents and purposes, nothing but *a law of assent.* The great Federal Government, in which is vested the sovereignty of the Territory, may give that *assent* before or after the organization of the proposed new government; it is perfectly optional with the Federal Government to give it before or after such organization, with this single difference: when that assent is in the shape of what is now called an "enabling act," and when the people of the Territory have proceeded according to the principles of that enabling act, and created a government, the assent being given, the whole sovereignty becomes vested, the independent State EXISTS, and then if Congress do not admit it, it is a foreign State in spite of all our powers. The danger, therefore, is in passing an enabling act, not in withholding one.

Who is it that does not remember the unfortunate Missouri controversy of 1820? An "enabling act," as latterly called, had been passed for the State of Missouri, in pursuance of which Missouri formed its constitution and asked for admission. Some quibbles were raised, and some non-essential points were alleged against its admission, and Missouri was well nigh rejected. All the Republican Senators and members of the House of Representatives at that day—I use the term in its old signification, not the new—said, "the assent of the Federal Government has been given to the act of Missouri. Missouri had created its government in pursuance of an enabling act, and was, therefore, sovereign and independent; and if Congress had not admitted Missouri, that State would have been a legally recognized foreign government on the west bank of the Mississippi river."

It is true that the physical power of the Federal Government might have sent armies and coerced Missouri into submission, but that would have converted it into a subjugated State; Missouri would not have been, in that case, a free and independent State; it would have made it an inferior, dependent vassal, subservient, and a subordinate member of the Confederacy. According to the true principles of the theory of our Government, whenever congressional assent to sovereignty and independence are conceded, the people of a Territory may act as they please, and it is an independent State thereafter. Now, when assent is not given prior to the time of admission, there is no danger of that kind of difficulty.

But, Mr. President, is it so important that an "*enabling act*" should be passed? The Senator thinks so, and refers to instances when such acts were passed. Why, sir, Tennessee, Arkansas, Michigan, Florida, Iowa, California, Maine, and

Vermont, eight States—new States, not in the original Confederacy—came into the Union without any enabling act on the part of Congress. Was Tennessee improperly admitted? It was recommended by George Washington. The proceedings that were instituted under Governor Blount in the then Territory of Tennessee, met the sanction of the Republicans of that State. Among the members of the convention, that revolutionary—no, the Senator does not give it that name—that "*irregular*" convention, is found the name of Andrew Jackson, of Tennessee. He was one of that "irregular convention;" and that "irregular convention," formed in part of General Jackson, made a constitution which was never submitted to the people, but was sent up to General Washington, then President of the United States; and here is the letter that he sent to Congress at the time he submitted the constitution of Tennessee for their consideration. It will be seen that it harmonizes well with what President Buchanan has said with regard to the constitution of Kansas:

UNITED STATES, *April* 8, 1796.

Gentlemen of the Senate
and of the House of Representatives:

By an act of Congress passed on the 26th of May, 1790, it was declared that the inhabitants of the territory of the United States south of the river Ohio should enjoy all the privileges, benefits, and advantages set forth in the ordinance of Congress for the government of the territory of the United States northwest of the river Ohio, and that the government of the said territory south of the Ohio should be similar to that which was then exercised in the territory northwest of the Ohio, except so far as was otherwise provided in the conditions expressed in an act of Congress passed the 2d of April, 1790, entitled "An act to accept a cession of the claims of the State of North Carolina to a certain district of western territory."

Among the privileges, benefits, and advantages thus secured to the inhabitants of the territory south of the river Ohio, appear to be the right of forming a permanent constitution and State government, and of admission, as a State, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever, when it should have therein sixty thousand free inhabitants: provided the constitution and government so to be formed should be republican, and in conformity to the principles contained in the articles of the said ordinance.

As proofs of the several requisites to entitle the territory south of the river Ohio to be admitted, as a State, into the Union, Governor Blount has transmitted a return of the enumeration of its inhabitants, and a printed copy of the constitution and form of government on which they have agreed, which, with his letters accompanying the same, are herewith laid before Congress.

GEO. WASHINGTON.

It contained no special executive recommendation; and, in that respect, harmonizes most beautifully with the position taken by President Buchanan. The Territory thus had an organic form; it was a people. Without any enabling act they met, formed a constitution, which was presented to Congress and approved, and the State admitted into the Union with as much regularity, with as much system, with as much order, as has accompanied the movements of any Territory and of any people within the compass of our whole republic.

How is it with Arkansas? The Senator from Illinois would have us understand that the movements in Arkansas seemed to meet the disapprobation of President Jackson. President Jackson, who had himself participated in the convention in Tennessee, is to be presented to us as though he condemned the proceedings in Arkansas. An examination of the opinion of the Attorney General in that case, will show the distinction, and make it clear as the noonday sun, unless I am greatly deceived in regard to the purport of that opinion:

"In the exercise of this right, the inhabitants of Arkansas may peaceably meet together in primary assemblies, or in conventions chosen by such assemblies, for the purpose of petitioning Congress to abrogate the territorial government, and to admit them into the Union as an independent State. The particular form which they may give to their petition cannot be material, so long as they confine themselves to the mere right of petitioning, and conduct all their proceedings in a peaceable manner. And as the power of Congress over the whole subject is plenary and unlimited, they may accept any constitution, however framed, which in their judgment meets the sense of the people to be affected by it. If, therefore, the citizens of Arkansas think proper to accompany their petition with a written constitution, framed and agreed on by their primary assemblies, or by a convention of delegates chosen by such assemblies, I perceive no legal objection to their power to do so, nor to any measures which may be taken to collect the sense of the people in respect to it; provided always, that such measures be commenced and prosecuted in a peaceable manner, in strict subordination to the existing territorial government, and in entire subserviency to the power of Congress to adopt, reject, or disregard them, at pleasure. *It is, however, very obvious that all measures commenced and prosecuted with a design to subvert the territorial government, and to establish and put in force, in its place, a new government, without the consent of Congress, will be unlawful.*"

Kansas has never proposed to put in operation a State government without the consent of Congress. They have formed it in subordination to the powers of the territorial government. It is but an emanation of the territorial government. It is to be submitted to Congress. If admitted into the Union, the constitution takes effect as the supreme law of that State in subordination to the Federal Constitution only; but, if not admitted, they do not propose to set up a separate State government. This, it will be seen, harmonizes with what I said on the subject of the assent of Congress, to wit: wherever any Territory undertakes to set up a territorial or State government, in opposition to Federal authority, it is rebellion. If the present acting, or claiming to act, Governor of Utah should undertake to set up a separate government, we have the undoubted right to refuse our assent, and to subjugate him to our authority by the force of the military arm of this Government. If the people of Kansas were to undertake to set up a government *in opposition* to the Federal authority, the same power could be exercised there. But while they do not propose to interfere with the Federal Government, nor to interfere with the territorial government until the assent of Congress is received, it makes no kind of difference whatever. This, too, harmonizes with the opinion of the Attorney General, which the honorable Senator from Illinois introduced and read.

There are, therefore, eight States in the Union that have formed their constitution without an enabling act; for two of those States the Senator from Illinois voted. California had no enabling act. But the Senator undertakes to show that though there was no enabling act, yet all the steps taken by the authorities of California were in subordination to the local government estab-

lished there, under General Riley. Whether that be right or wrong, whether his reference be correct or incorrect, I shall not stop to inquire, but this much is true: the action of the convention in the Territory of Kansas is as much in subordination to the Federal authority as was the action in the Territory of California; and if he could vote for the admission of California, there can be no reason why he may not vote for Kansas with the same propriety. If he could vote for the admission of Florida, there can be no reason assigned why he may not vote for that of Kansas. If he could vote for Iowa, there can be no good reason why he should not vote, under the same circumstances, for the admission of Kansas. By his own deed he is estopped; by his own act he is forever estopped from alleging, as a *necessary* prerequisite, an enabling act. The assent of Congress may be given at any time; either before or after the formation of a constitution.

There is a peculiar reason for it in the case of Kansas. The Louisiana treaty defines and guarantees the rights of the people living in that Territory. The law of Congress, subsequently passed, made an additional pledge that the people should have a right to admission at the proper time. The authors and advocates of the great Kansas-Nebraska act thought it had added to the rights, or reclaimed the rights of the people living in organized Territories. Its framers thought they had conferred some principles heretofore denied to them. If so, under the treaty of Louisiana, under the law of Congress, under the Kansas act, the right of the people, whenever their numbers are sufficient to take preparatory steps for the formation of a constitution, and present it for admission into the Union, is conceded. They do not present it for approval; they do not present it in order to have it indorsed. They present it, if at all, for the sake of being admitted into the Union. If the constitution is republican, we may admit them; if it is not republican, we cannot admit them.

In strict conformity with this doctrine stands the Democratic platform to which the Senator referred. It says, in emphatic terms, that the people of a Territory should, whenever they had numbers sufficient, proceed to form their State constitution, and to adopt such institutions as they should think proper.

But the main objection which the Senator has presented is, that while he may forego these objections, there are other reasons why we should not forego either them or any others. My position is, that the mere want of an enabling act is not an objection; that lawful proceedings in an organized Territory, to form a constitution, are regular, in conformity to law, in conformity to usage, and I have presented cases just such as the Senator has heretofore indorsed and approved; and, consequently, they ought not to be considered in the list of objections that he raises against the admission of Kansas.

His chief objection, however, seems to be, that the constitution is not submitted to the people. On that he dwells; and wherefore? Why, that the principle of popular sovereignty required the constitution to be submitted to the people? In other words, he says that a subsequent vote ought to have been had in addition to what the convention has done, so that the people by subsequent vote might decide this question of constitution or no constitution. Mr. President, if, as the Senator from Illinois says, the Kansas-Nebraska act puts the slave question where all other questions before were, then, in order to see what the rights of the people were under the Kansas act, we have but to ascertain what their rights were on all other questions before the Kansas act was passed.

How were they? Is it true that the people do not act, in any case, unless they meet in mass meeting?—in a tumultuous assemblage?—or is it not in harmony with the genius of republican institutions—is it not in strict conformity with the Americanism of government that we act through delegates, through agents, through representatives? The constitution of the Senator's own State was not submitted to the people of Illinois. The constitution of his native State, Vermont, was not submitted to the people of that State, and yet it is worthy of remark that the constitution of Vermont uses this language: "We, the people of the State of Vermont, do ordain and establish." They ordain and establish *by their delegates*, by their representatives. So with Illinois. In its constitution the words, "we, the people," are used; and yet the people never acted upon it, *save through their agents*, their delegates in convention assembled. In the State of Illinois the constitution says, "all prosecutions shall be in the name of the people of the State of Illinois," not in the name of the State. The PEOPLE stand as prosecutors. I believe the first time I ever had the honor to make the acquaintance of the very distinguished gentleman was while he presided on the bench in the city of Quincy. There was a prosecution conducted in the name of the *people of the State of Illinois*. Was that prosecution by the people, in their own proper person? No; the people were ably and well represented on the bench by the distinguished Senator from Illinois; the people were represented in the grand jury room by selections made for their purpose; the people were represented by the prosecuting attorney, a distinguished gentleman selected for that purpose. It was all done in the name of the people, in behalf of the people, for the people, but done by the people's agents and representatives.

Mr. President, it is not only so in these instances, but, as I before remarked, it is the great *Americanism* of Government more peculiar in the United States than anywhere else. The people act through agents; and I believe it to be a universal rule of agency, that where there is a general power given, the principal is bound by all the acts of the agent, unless there be a reservation of a right of submission to the principal for his approbation.

I have before me a list of States, showing that Kansas was not peculiar in this respect. *A majority of the constitutions of the States forming this Union were adopted by conventions, and never submitted to the people!* More than this; the very opinion of the Attorney General, read by the Senator from Illinois, with reference to the Ark-

ansas case, (his own authority,) says the people *may*, in primary assemblies, or through delegates chosen by them for that purpose, form a constitution and send it to Congress for their consideration.

We have, then, the gentleman's own State, native and adopted; we have a large majority—the exact number I will not state—of all the States of this Union, whose constitutions were formed by the people, *through their agents*, and without a submission of them to a vote of the people; *and in a minority of instances only*, have the constitutions of States been submitted to the people for their approbation or rejection. More than that; we have the Senator's own committal in his support of the Toombs bill at the last Congress. The Toombs bill was taken by the honorable Senator, who was then chairman of the Committee on Territories, pressed by him, and passed through the Senate. That bill did not contain any clause requiring the constitution to be submitted to a vote of the people. The bill which he had first introduced did contain such a requirement; and yet, when the two were put side by side and he was called on to choose between them, he took that which had no such provision in it, thus leaving it for the convention of the Territory to decide as they might deem proper.

If the Senate of the United States, and if the father of the Kansas-Nebraska act—if the great advocate of popular sovereignty could introduce, support, and cause to be passed, an enabling act permitting the convention of Kansas to make their constitution, *and to make it final*, to ordain and establish it without submitting it to the people, surely, when the people of Kansas, through their territorial government, came to act on the same subject, if they imitated the honorable Senator, and passed a similar bill, they ought not to be held up to public scorn and indignation. They had an "illustrious predecessor;" they had a very distinguished example in the person of the Senator from Illinois, and if they but followed that example, they ought not to be held up to public scorn and indignation. I think they acted wisely in submitting the matter to the convention which represented the people. It is better for the people of Kansas to be heard through their representatives than for the people of Illinois to interfere in Kansas matters through the able Senator from that State, or the people of Missouri through myself or my colleague.

We have heard much of popular sovereignty and popular rights, but they seem to be frittered away and cut down, limb after limb. First you cut off one, and then another, until you leave nothing whatever to boast of when you go before the people of the country and speak of the great merits of the Kansas-Nebraska act. If you can tie up the people's hands, and say to them, "You shall do this," are you carrying out the principles of the Kansas act? The act says they may do it in any manner they please. They did please to adopt a constitution finally in convention, as did Tennessee, Illinois, and Vermont. Now it is gravely proposed that the Senate and House of Representatives shall say the people of Kansas did not please to do it in a way which Congress is pleased to consider right, and, therefore, it shall be undone, thus trampling under foot the very principle which the Senator said had been sanctioned in the bill, that they might do as they pleased; that they might adopt a constitution in any manner and form they thought proper; that they might establish their domestic institutions in their own way. The express language of the bill is, "*in their own way*"—not the way I might advocate, not the way the Senator from Illinois might advocate, not the way the North, or the South, might like, but the language, the spirit, the principle, the essence of the bill, is "in their *own* way." The people of Kansas have adopted their *own* way, and that "way" is in strict conformity with the example set when the Senator from Illinois supported the Toombs bill. It was to let the convention, as the representatives of the people, do as they pleased on the subject presented to them. That convention did as they pleased on the subject, and now it is formally proposed to revise, reform, remodel, and recast, all the action that has taken place, although the people of Kansas, through their convention, have done their work only "in their own way." I can see no consistency in this. But I do see in it a principle set up in opposition to what we have been told was the principle of the Kansas-Nebraska act.

It has, however, been intimated by the honorable Senator from Illinois that the Kansas-Nebraska act itself required the constitution to be submitted to the people of Kansas after its completion by the convention. On that point, I join issue. The act makes no such requirement. It contains no such obligation. On one point, I confess I did not distinctly understand the position of the Senator, and I hope, therefore, he will not consider me intrusive if I ask him how I am to understand him on the subject of the Governor's interference in regard to submission or non-submission of the constitution?

Mr. DOUGLAS. I declined to discuss that, because the Governor had acted under the instructions of the President.

Mr. GREEN. Then I understand the Senator as taking no position on the point, whether the executive of the Territory did right or wrong when he proposed that the whole constitution should be submitted. My view is, that, if he says the Governor did *right*, it conflicts with the principles of the Kansas-Nebraska act, and lets the agent of the Federal Government interfere to do what he said the people of the Territory might, uninfluenced, and of right, do "in their *own* way." If the Senator says the Governor did *wrong;* if the Senator says the Governor of the Territory had *no right* to advise on this point, that is an admission that the Governor's conduct is not justified by the provisions of the Kansas-Nebraska act. Because, if that act required the submission of the constitution to a fair and uninfluenced popular vote, it was the official duty of the Executive to see that part of the bill, like every other, executed and carried out. Here is a dilemma, and I leave the Senator to take either horn. If he says the Governor did right, he permits a Federal functionary to dictate to the people, when the language

of the act is, that they may act in their own way. If he says the Governor did wrong, it is an admission that the act did not require the submission of the constitution.

But we are told that the people have been deceived in this matter; that pledges and promises were made to the people of Kansas which have been broken and violated. On questions of fact, about which there is great controversy, and upon which we have no evidence, I do not deem it proper to dwell at all. Who made the pledges alluded to, and to what extent were they made? I apprehend it will be found that the Senator from Illinois is mistaken on this point. That an individual pledge in favor of submission may have been made, I do not pretend to controvert; but that it was general, or very extended, I wholly deny. We have no evidence of it. It is true that Mr. Stanton, who was acting Governor of the Territory before Mr. Walker arrived, made use of this language.

Mr. DOUGLAS. From what book is the Senator about to read?

Mr. GREEN. From the "Political Text-Book," a compilation by Mr. Cluskey.

Mr. DOUGLAS. It is a private book.

Mr. GREEN. Yes; it is not a public document. The correspondence and proclamations have not yet been officially printed; but I suppose the genuineness of what I am about to read will not be controverted.

Mr. DOUGLAS. I presume not.

Mr. GREEN. Mr. Stanton, before the people had voted for delegates to the convention, used this language, in speaking of the act providing for the convention:

"In this light the act must be allowed to have provided for a full and fair expression of the will of the people through the delegates who may be chosen to represent them in the constitutional convention."

Here, before the members of the convention were elected, the idea of the acting Governor is promulgated to the people, that they have a full and fair opportunity to speak through the convention. What else?

"I do not doubt, however, that, in order to avoid all pretext for resistance to the peaceful operation of this law"—

Not because there is any obligation to do so, but to avoid all *pretext* for complaint—

"the convention itself will, in some form, provide for submitting the great distracting question regarding their social institution, which has so long agitated the people of Kansas, to a fair vote of all the actual *bona fide* residents of the Territory, with every possible security against fraud and violence. If the constitution be thus framed, and the question of difference thus submitted to the decision of the people"—

That is, if the slavery question be submitted to the people—

"I believe that Kansas will be admitted by Congress without delay as one of the sovereign States of the American Union; and the territorial authorities will be immediately withdrawn."

Now we see what was the understanding of the people before the election of the convention. It was this: the people can be heard through delegates if they choose; now is the time for them to exert their power; if you have any preferences on the subject, come up and vote; "but," says the acting Governor, "as a mere question of policy, to avoid all pretext of complaint, let the slavery question be submitted to a separate vote." Governor Walker is a little broader in his language, but he substantially takes the same position. There seems to be in the mind of Governor Walker a confusion of ideas. He does not seem to apprehend that they could have a separation of the slave question from the body of the constitution. The policy or propriety of this separation is not a matter for me to consider. It is a matter for the consideration of the people of Kansas, who have the power to settle all these questions "*in their own way*," and I am the last who would trample under foot that principle which has been so much lauded by the honorable Senator from Illinois. While the Governor has the confusion of ideas of which I have spoken, it is very manifest that his whole attention was directed to the slavery question as the proper matter for submission to the people. Before the election of delegates took place he arrived in the Territory, and published his inaugural address, in which, talking to the whole people of Kansas, he said:

"You should not console yourselves, my fellow-citizens, with the reflection that you may, by a subsequent vote, defeat the ratification of the constitution. Although most anxious to secure to you the exercise of that great constitutional right"—

He does not say it is a legal right emanating from the Kansas-Nebraska act, but a constitutional right. I should like to have him, or any other man, show me the clause of any constitution, State or Federal, that requires the people of a new Territory, in forming the first constitution under which they act, to submit it, or even any part of it, to a subsequent vote of the people—

"and believing that the convention is the servant and not the master of the people, yet I have no power to dictate the proceedings of that body."

They were acting under a law which said the people might settle all these questions in their own way. The Governor adds:

"I cannot doubt, however, the course they will adopt on this subject. *But why incur the hazard* of the preliminary formation of a constitution by a minority, as alleged by you, when a majority, by their own votes, could control the forming of that instrument?"

This shows that he did *not* regard it as a fixed fact that the law, or any other power, could induce the convention, *neeessarily*, to submit the constitution to a popular vote. His argument was advisory. Addressing those who were disposed to keep aloof, he says to them, "If you have the majority, why not go to the polls, secure the convention, and have a constitution made in the manner you prefer?" May I not say that they refused to participate in the election from one of two considerations; either they knew that they were a minority of the Territory, or they were standing out in open rebellion to the legal authorities, defying both the territorial and the Federal Government.

The honorable Senator's speech conforms to precisely this position. He admits that the convention was regularly called, in pursuance of law, acting in conformity both to Federal and local authority. Why was it opposed? Was it for any wise purpose? Was it in order to accomplish any

good end? The opposition was in order to keep the subject open. It was a captious, a factious opposition. It was an opposition from a party composed of two elements which have been dangerous to the peace of our western country, uniting, on the one hand, fanaticism, with a hope of pecuniary reward on the other. Fanaticism is sterile. Fanaticism is barren. Fanaticism is unproductive. Fanaticism will die out of itself when the sober reflection of the people comes round. To keep up that fanaticism they unite with it another element—the element of wild speculation, the hope of pecuniary gain. The union of these two elements has fanned the flame, endangered the Government, hazarded our peace, rendered insecure our property, alienating the feelings of brother from brother, because they happen to live on different sides of an imaginary line. I hope to see this union of elements broken down. I hope to see the Kansas *embroglio* ended; ended in conformity with law; ended in conformity with the action of the legal convention of the people; ended by giving force and effect to a constitution that has been as regularly, as honestly, as fairly agreed on as any constitution that this Government finds within the range of the thirty-one States. Should Kansas be admitted; should the peace of the country be reëstablished; should this bone of contention be taken away forever; town lots, land investments, and the other means of pecuniary profit broken down, the fanatical excitement will cease and determine. It is the hope of some to keep up the excitement, and I am sorry to see the course of the honorable Senator from Illinois who has fought for us so long—not for "the slave power," but for justice, for equality north and south, for equality without reference to locality, for great principles. Knowing that he is still wedded to these principles, I am sorry to see his course calculated to give that fanatical element the benefit of his powerful talents. This is the real cause of my regret.

It is said—and I throw in the expression here to let my view be known, and not as material to the matter under consideration—that the law of climate has dedicated Kansas to freedom, meaning thereby that it is not adapted to African slavery. That may be so or not. I am not a very good judge of climate, and I do not believe the Senators present are very good judges of the climate of Kansas. I do not think many of them have seen it, or have had very accurate reports of the range of the barometer and thermometer there for the last few years. What I say is, that if the law of climate is to determine the question of slavery in any Territory within the limits of the United States, where the two races are thrown together, I am content to trust it to that law of climate, without any coercive law, without any law of Congress, without any territorial law, without any State law. Let me appeal to my northern friends who believe there is so much potency in the law of climate, the law of production, the law of vocation, the law of pursuit; if these be sufficient, open your northern States and see whether you will not soon have a few of our slaves there performing menial services. Whether that be true or not, is it not well to leave Kansas to the people of Kansas, to the voters of Kansas? If they are willing to trust this matter to the law of climate they are settling it in their own way. If they are determined to have a positive prohibition of slavery in their constitution they are settling it in their own way, in conformity with the law which gave them an organic form. Those of us who boasted of the rights they had under the law, should be the last to complain of the manner in which they exercise those rights.

I know, however, that there is one thing greatly complained of by various persons, and which is regarded by some as a sufficient reason why Kansas ought to be kept out of the Union; while others, who do not go to that extreme, express much regret on the subject—I allude to the fact that the whole constitution has not been submitted to the popular vote. I hold that there was no necessity for any such submission. If after the convention expressed their judgment, it was proper, as a mere matter of policy or prudence, to submit any question to a separate vote of the people, they ought to submit the real bone of contention. I hold further, that the submission of the slavery question in the manner in which it has been submitted, is fairer, better calculated to collect the real will and judgment of the people, than if the whole constitution had been submitted. Suppose the convention had adopted a constitution prohibiting slavery, and had submitted it to the people as the Senator from Illinois thinks the law required. If this had been done, and my friend from Mississippi [Mr. BROWN] lived there, he would have been compelled to vote against slavery or against the constitution. Whenever many questions are mixed up together, and they are all presented as an entirety, neither one of them has a fair expression of the people who thus pass judgment on them. So far is this principle known to be correct, that the constitution of Louisiana requires that every law shall embrace but one subject, which shall be stated in its title.

Mr. BIGLER. That feature is in the new constitution of Kansas.

Mr. GREEN. It is in the constitution of Kansas.

Mr. GWIN. And of California.

Mr. GREEN. If the matter were investigated, I think it would be found that the same provision exists in many other States. The object is to prevent "log rolling," and to insure a fair, honest expression of the people or their representatives when they pass judgment on any subject. You may put together in an improvement appropriation bill many items, neither one of which has sufficient intrinsic merit to receive the assent of Congress; but tie them together, and perhaps you can pass all. If the slave question had been tied to the suffrage question; the governor's qualification question; the taxation question; the bank question; and if I had been a citizen of Kansas, I should have been compelled, in order to vote for holding negroes in Kansas, to swallow all the objectionable features in every other branch of the constitution. To submit a single question is the only fair way, the only just way, the only simple, certain method of collecting the public

will. There is uncertainty in all human proceedings. The people may not come to the polls; the representatives may not do their duty; but we proceed on the idea that there is a just principle involved; and if the principle be just, and the people have an opportunity to carry it out, and do not carry it out, but forfeit their rights, it is *their* misfortune, not ours; and our sympathies are blunted when we consider that their passions were the sole cause of the grievances of which they complain.

The constitution is not submitted to the people of Kansas. I know the Senator undertook to prove that the people were placed under coercion, that they were compelled to go to the polls and vote, and that before they could vote on the slave question, they were compelled to vote for the constitution. If the whole constitution had been submitted before they could vote for or against slavery, they would have been compelled to vote in the manner which the Senator represented as objectionable, which he animadverted upon, which he censured and condemned. If the whole constitution had been submitted, the voter, in order to vote for slavery, would have been compelled to indorse every feature of the constitution; and, in order to vote against it, would have been compelled to vote against the other features of the constitution, and thus leave him without a State government. The anxiety to get a State government might be strong enough to induce him to forego his objections to other branches of the constitution, and hence, as I before remarked, the mode of submission adopted by the convention was the only simple, fair, and just method of collecting the popular will upon the slavery question. In the convention of California, a proposition was made to submit the slavery question to a separate vote of the people. The convention was anxious not to endanger the admission of the State into the Union. They did not believe a majority of their people desired slavery, and therefore they did not submit it as a separate question, but they submitted the whole constitution to a vote of the people of California. It came up here, and we all know there was a great deal of complaint on the part of northern as well as southern Senators and members in consequence of the non-submission of the slavery question.

By an examination of the schedule, framed by the Kansas convention, it will be seen that the constitution itself is not submitted. The Senator is mistaken when he says that the constitution is submitted, and that the people are required to vote for it. He says the constitution receives its vitality and takes effect from its ratification. The Senator is entirely mistaken. It never does take effect until Kansas shall be admitted into the Union by Congress. "But," says the Senator, "the schedule says the constitution is to be submitted to the people." Yes. For what purpose? For ratification. What is the meaning of "to ratify?" It is to settle, to fix. There is a part of the constitution not settled, not fixed, and *that* must be ratified. *That* question is to be passed upon by the people, when they say at the polls whether they will retain a provision sanctioning African slavery, or will strike it out. They are to settle, fix, ratify that unsettled, unfixed, unratified part. That is all the article provides for. We are not to take a *mere expression*, but must take the purport of the whole article. If a logician, or a judge, or a statesman, undertakes to construe the meaning of that article, he takes the whole of it together, and so taking it, what does he find? That nothing is to be ratified, fixed, settled; but the unratified, unfixed, unsettled part, which is whether slavery shall be retained in the constitution or not. There is to be no decision on any part of the constitution, except that which relates to slavery.

The Senator from Illinois, however, seems to think that each voter must first vote for the constitution, before he can vote for or against slavery. That is another mistake. The voter does not vote for or against the constitution. He simply votes a ballot which is to be counted for or against slavery. If he votes the ballot containing the words "constitution with slavery," it is to be counted in favor of slavery; but if he votes "constitution with no slavery," it is to be counted in favor of striking out the article in the constitution providing for slavery. The only question submitted is, Will you, or will you not, have in the constitution of Kansas a clause sanctioning slavery? Is the writing of the word "constitution" on the ballot to be construed as making the voter vote for the constitution? Then I can show that, if a man in Louisiana voted on the adoption of their new constitution, he was involved in this seeming contradiction. The constitution of Louisiana was submitted to the people, under a schedule which required, "each ballot shall be indorsed 'the constitution accepted,' or 'the constitution rejected.'" There would be just about as much plausibility in saying that a voter in Louisiana was compelled to vote first for the constitution and then for its rejection, or first for the constitution and then for its acceptance, as in saying here that a man in Kansas is to vote first for the constitution and then for or against slavery. The question submitted in Louisiana was the acceptance or rejection of the constitution. The question submitted in Kansas is the insertion or striking out of an article sanctioning slavery. That is the sole question to be decided.

The opposition party in Kansas—I do not know what title they assume to themselves—deny that the constitution is submitted, and the Senator makes an issue with them. Those who live on the ground, who know what has been done, say that the whole constitution is *not* submitted. I say there was no more necessity for its submission than there was for the submission of the constitution of Illinois. The people of Kansas acted through their representatives. Those representatives had power either to adopt a constitution *finally*, or simply to make a proposition, and submit it for the consideration of the people.

There is nothing novel in the positions which I have stated. They are in conformity with the past action of the Government. I have before me statements showing what States have been admitted with an enabling act, and those admitted without any such act having been previously passed.

The following States were authorized to form constitutions by acts of Congress *previous* to their admission: Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Missouri, and Wisconsin. The States for which no enabling act was previously passed, authorizing the formation of a constitution, were Vermont, Tennessee, Maine, Arkansas, Michigan, Florida, Texas, and Iowa. I have also a list of all the new States admitted since the Federal Constitution went into operation in 1789, showing what States were organized without the previous authority of Congress, and what States submitted their constitutions to a vote of the people, after being framed by their conventions. This throws important light on the past history of the Government, and that past history is in strict accordance with the views I have advanced.

For Vermont, the constitution was formed by a convention, in July, 1777. It was revised by a convention December 25, 1777, without authority of Congress. "The constitution was not ratified by the people." I quote from Thompson's "Vermont," part 2, page 105. The application for admission was made February 9, 1791, and the State was admitted March 4, 1791, as I find from the Statutes at Large, vol. 1, page 191.

Kentucky applied for admission through the delegates of a convention, December 9, 1790; her constitution was not then formed. My authority is the appendix to the House Journal, vol. 1, pages 411-12. She was admitted June 1, 1792; her constitution was laid before Congress, November 7, 1792, as I learn from the House Journal, vol. 1, page 614. There is no evidence that the constitution was submitted to a vote of the people.

For Tennessee, the constitution was formed by a convention without authority of Congress, February 6, 1796, as I learn from American State Papers, "miscellaneous," vol. 1, pages 146-7. She applied for admission, April 8, 1796, as is shown by Senate Journal, April 11, and House Journal April 8, 1796. She was admitted June 1, 1796. The constitution was not submitted to the people, but it was forwarded to the Secretary of State, as I learn from the annals of Tennessee, pages 656-7, and the history of Tennessee, page 471.

For Ohio, the constitution was formed by a convention, under authority of Congress, November 29, 1802, as is shown by the Statutes at Large, vol. 2, pages 173, 201. She applied for admission January 7, 1803, as is shown by Senate Journal, vol. 3, page 251. She was admitted February 19, 1803, as I find in the Statutes at Large, vol. 2, page 201. The constitution was not submitted to the people, as I learn from Howe's Historical Collections of Ohio, page 16.

In Louisiana, the constitution was formed by a convention January 22, 1812, under authority of Congress of the date of February 10, 1811. I refer to the Statutes at Large, vol. 2, page 641. She was admitted April 8, 1812, and there is no evidence that the constitution was submitted to a vote of the people.

The constitution of Indiana was formed by a convention June 29, 1816, under authority of Congress, as I find in the Statutes at Large, vol. 3, page 289. She was admitted December 11, 1816. I quote from the Statutes at Large, vol. 3, page 399. Her constitution was submitted to Congress June 10, 1817, as is shown by the House Journal, second session, Twenty-Fourth Congress, page 180. There is no evidence that the constitution was submitted to a vote of the people.

The constitution of Mississippi was formed by a convention August 15, 1817—I again refer to the Statutes at Large, vol. 3, page 472—under authority of Congress. (Statutes, vol. 3, page 348.) Her constitution was submitted to Congress December 4, 1817. She was admitted December 10, 1817, (Statutes at Large, vol. 3, page 472,) and there is no evidence that the constitution was submitted to a vote of the people.

The constitution of Illinois was formed by a convention August 26, 1818, under authority of Congress—(see Statutes at Large, vol. 3, page 428;) submitted to the House of Representatives November 7, 1818, and admitted December 3, 1818. (Statutes, vol. 3, page 536.) There is no evidence that the constitution was submitted to a vote of the people.

The constitution of Alabama was formed by a convention August 2, 1819, under authority of Congress, (Statutes at Large, vol. 3, page 489;) her constitution was submitted to the House of Representatives December 6, 1819; and she was admitted December 14, 1819, (Statutes at Large, vol. 3, page 608.) There is no evidence that the constitution was submitted to the people.

The constitution of Maine was formed by a convention without authority of Congress, October 29, 1819. Her constitution was submitted to Congress, December 8, 1819, (see House Journal, first session Sixteenth Congress, pages 18-60,) and she was admitted, March 15, 1820. The constitution was submitted to a vote of the people, as I learn from Williamson's History of Maine, vol. 2, page 674.

The constitution of Missouri was formed by a convention, 19th July, 1820, under authority of Congress, (Statutes at Large, vol. 3, page 545.) Her constitution was submitted November 16, 1820. One of my authorities is Mr. Lowndes's report, November 23, 1820, (American State Papers, "Miscellaneous," vol. 2, page 625.) The joint resolution admitting the State on a "certain condition," was approved March 2, 1821. The condition was accepted, and the State admitted by proclamation of the President, of August 10, 1821. There is no evidence that the constitution was submitted to a vote of the people.

The constitution of Michigan was formed by a convention under the authority of the ordinance of 1787, and without the authority of Congress. It was submitted to and ratified by the people, (see Lammon's History of Michigan, pages 241-243; also, Senate Documents 5 and 211, Twenty-Fourth Congress, first session, and Reports of Committees of House of Representatives, first session Twenty-Fourth Congress, 380.) She was admitted on the condition that she should amend her constitution so as to change her boundary, (Statutes at Large, vol. 5, page 49.)

The constitution of Arkansas was formed by

a convention without authority of Congress. I refer to House Documents, Twenty-Fourth Congress, first session, No. 164; Niles's Register, vol. 49, page 243, for Attorney General's opinion; and for debates, to "Congressional Debates," vol. 12, parts 1 and 2. She was admitted with a constitution, by joint resolution, June 15, 1836. The constitution was not submitted to the people.

The constitution of Florida was formed by a convention without authority of Congress, and submitted to the people. (See House Doc. 208, Twenty-Fifth Congress, third session, and Statutes at Large, vol. 5, page 742.) She was admitted with a constitution, March 3, 1845.

The constitution of Wisconsin was formed by a convention under authority of Congress. (Statutes, vol. 9, page 56; and House Doc. 49, Twenty-Ninth Congress, second session.) She was admitted on certain conditions. (Statutes, vol. 9, page 178.) The constitution had not been submitted to the people previous to her application with a constitution. For debates see Congressional Globe and Appendix, Twenty-Ninth Congress, first and second sessions.

The constitution of Iowa was formed by a convention on the 18th May, 1846, without authority of Congress, and was submitted to the people. (See House Doc. 16, Twenty-Ninth Congress, second session, page 17.) She was admitted with her constitution, March 3, 1845.

The constitution of California was formed by a convention without authority of Congress, and it was submitted to and ratified by the people. (See Senate Mis. Doc. 68, page 14, Thirty-First Congress, first session.) She was admitted September 9, 1850.

I have thus, as briefly as I could, undertaken to show, first, that Kansas is, under the Louisiana treaty, under the law of Congress, under the Kansas-Nebraska act, under the special pledge of the Democratic party in the Cincinnati convention, entitled to admission, having now a republican form of government; second, that the convention was legally and fairly called, sanctioned by the Federal authorities, acting in conformity with the territorial government, not in conflict, not in antagonism, not in opposition. Third, I have shown that the presumption is that the convention fairly and truly represented the people and reflected their will. On this point we have heard of broken pledges and violated promises. We have heard of vows that have not been fulfilled, but we have no evidence on the subject.

I heard the Senator from Illinois also make remarks here touching what would be the final result of the submission of the slave question; that he had no doubt "returns" would come in, intimating that he believed frauds would be perpetrated. But eight months ago, who so loud, so forcible, and so eloquent as the Senator from Illinois in denouncing the party that had insinuated fraud! On what evidence is it that he would insinuate that frauds will be committed in the returns that are to come in when the question of slavery shall be submitted. I have no right to impute fraud. I never will impute fraud. Fraud is to be *proved*, not *presumed*. When the honorable gentleman occupied a place on the bench, if an attorney had made an argument like that, he would be ready almost to strike his name from the roll of attorneys. Is there any evidence, or are there any facts developed in this case which would justify him in inferring or presuming fraud? None that I have seen, and he does us injustice if he has it in his possession and retains it as a secret; it ought to be developed; it ought to come before the country in a tangible shape, for we are as much responsible for our action, when that action depends on facts, as the honorable Senator himself.

The legal presumption is, that the representative reflects the will of the represented. There is no evidence before us conflicting with that legal presumption. The election has not yet taken place. Is there any preparation for fraud? Have schemes been concocted, have plans been devised by which fraud is to be perpetrated in the voting upon that question? I will not believe it in advance of the fact itself. Is it for that reason the honorable Senator thinks this whole matter should be reversed, the whole subject thrown back, and a complete revival of the complication of difficulties that have beset us on our western border? Is it because of this *anticipated* fraud? I have shown it cannot be because of the want of an enabling act, for he has voted the other way in several instances. I have shown that it cannot be for the want of submitting the whole question to the people, because he has voted the other way in several other instances. I have shown that this convention was legally and constitutionally called. That he admits. I have shown that the legal presumption is, that they reflect the will of the people. Is there then any rebutting evidence? There is nothing else in the preceding part of the argument to justify his now separating from us, and, when we come to this bifurcated road, his taking the left hand. Is there any reason why he should do it on this simple, *anticipated* idea of fraud, on which there is no particle of evidence before us? No; the legal presumption still stands unassailed. The legal presumption is still potent enough to justify our action on it, and we must act on it.

In the next place, I have shown that the convention was under no obligation, imposed either by law or usage, to submit the constitution to a vote of the people. Further, I have shown, I think, that a majority of the States entered the Union with constitutions not previously submitted to the people. If Kansas has copied the example set by a majority of its elder sisters, surely nothing will be urged in complaint against Kansas because it did not follow the *minority*. It is true, I heard the Senator commending the rule, which he says is found in the Minnesota bill.

Here I will remark that, as far as I have examined the law — and I have examined every case I could—I find, from the beginning of the Government, in 1789, down to the present day, there never was a prerequisite, even where Congress passed an enabling act, that the result of the convention should be submitted to the people, save in the Minnesota bill. It was not in the Ohio bill; it was not in the Indiana bill; it was not in the Illinois bill; it was not in the Alabama bill; it was not in the Mississippi bill. The other

States were formed on their own responsibility, without an enabling act. In none of those enabling acts—not even in the Wisconsin bill—was there a provision requiring the Constitution to be submitted to the people. In no bill, save one, that ever passed Congress was any such provision contained. If the convention of the Territory of Kansas deemed it proper to copy the example which Congress had set, which a majority of sister States had set, I can see in this no cause of objection to Kansas at our hands.

Again, I have shown that the only question about which there is any controversy is separately submitted to a fair vote of the people. About this I have no doubt or controversy. The only question that has been a bone of contention, that has been the cause of stirring up strife, that has been made the pretext for assaults on different sections of this Union—that one single, important question, is submitted to a fair vote of the people. What the result of that vote will be it is impossible for me to foretell. This much, however, I can with propriety say: If a majority of the people there are determined not to have African slaves, it would be folly, by any scheme, by any trick, to get up a constitution adverse to the will of the majority; and hence I am glad this slavery question is fairly submitted. Although I greatly prefer having no constitutional and no legal barriers, though I subscribe most heartily to the doctrine of climate, of production, and of vocation, and think it the only sound solution of this question within the limits of the Federal Union, still my opinion is not to be set up as dictatorial to influence others. It is but my individual property; I shall act upon it so far as I am able. As it is thus submitted, it is the only question of controversy. Who is it that complains of any provision in the Kansas constitution? and who is it that could complain of a provision in that constitution, who did not have a fair opportunity to make it otherwise, if he is in the majority? and if he is in the minority, let him complain and gnash his teeth in vain. Minorities are expected to complain; but it is the duty of minorities to submit as gracefully as their feelings will well permit. If they were the majority, they had the opportunity to make it otherwise. If they did not choose to exercise their right, it is their fault and their misfortune. If the majority have exercised their legal rights in an honorable, upright, and fair manner, they are not to be forced to give way to a factious minority.

I have also shown there is no legal objection, and no prudential consideration, to prevent the admission of Kansas. How, then, are we to act on this subject? Are we to go back and travel over the detail of circumstances that occurred in Kansas, so far as presented in the President's message? It is unnecessary, except so far as they bear on the fairness of this convention, the fair opportunity for the free expression of the will of the people. Whether the President's reasoning be right or wrong, let it pass. It ought to commend him for his patriotism, for his disinterested view, and for the sound conclusion at which he arrives. With this commendation, and with this support, whether he is right or wrong in saying the law requires the slave branch of this controverted matter to be submitted to a vote of the people, I shall not utter one word of complaint.

There is a still greater object in view than to look back at the past, and find fault with this or that proceeding which occurred in Kansas. This is the President's view. Practical men must take hold of subjects and act in a practical manner, to effectuate the most good in a constitutional and legal way. From all the investigation I have given to this subject, I am satisfied that the good of Kansas, the good, the peace, the prosperity of the whole Union will be affected more or less by the decision that we make on this Kansas question. If Congress keeps it open, if excitement is still to spread through the land, if a system of warfare is to be gotten up plunging the land in gloom, and perhaps reaching to the extreme of shedding human blood, the consequences will be on those who reopen the slave question, the Kansas question, the squatter sovereignty question, or any other question connected with the well-being of Kansas. If there be any question that can be fairly decided in Kansas, it is the slave question. I believe that it will be fairly decided there. I believe the constitution meets the approbation of a majority of the people of Kansas. In regard to that, I have no question or doubt, and my belief, founded on the slight sources of information I possess, is at least to be treated as a set-off to the fear of fraud, and to the allegation of improper influences, on the part of the people of Kansas, as alleged by the Senator from Illinois.

Mr. President, I have thus given my views of this subject. I have elaborated no single point. It has been my purpose simply to show that there is no obstacle in the way, and that there are considerations why, in conformity with the past action of the country, we should admit Kansas at once. I believe she has acted as fairly as any other Territory. I have stated the reason why I have given my view of the case. Whether the constitution will come up in the one shape or the other, is a subject about which I have no right to express an opinion. Whether it will come up at all, or not, I am not able to say, though I apprehend it will. I have only felt bound to meet the objections urged by the Senator, because I thought they would have a prejudicial effect upon the country, and an exceedingly prejudicial effect in Kansas, where an election is to be held on the 21st of this month. It is true little that I can say or little that others can say, will reach Kansas before the election; but, at least, both sides ought to be partially heard—heard enough, at least, to compare them together and see which is in conformity with the Federal Constitution, and which is in conformity with the law, which is in conformity with the practice of the Government. Whether I have succeeded in showing that the position I take is correct, is, of course, for others to determine.

Mr. BIGLER obtained the floor.

Mr. DOUGLAS. I trust I shall be permitted to say a few words in explanation.

Mr. BIGLER. I shall most cheerfully yield

the floor to the Senator from Illinois, after a very few remarks. My object is to take the floor—not to speak to-day, but to move the postponement of this subject until Monday, unless some other Senator desires to speak to-morrow.

Mr. DOUGLAS. I will make the motion in the Senator's name, with that understanding.

Mr. BIGLER. That is satisfactory.

Mr. DOUGLAS. Mr. President, I have listened to the Senator from Missouri [Mr. GREEN] with unfeigned pleasure. There has been a fairness in his tone and in his line of argument which shows that he has been arguing from his convictions, with the view of stating what he conceives to be the true, sound aspect of this question. It is gratifying to me to hear the subject discussed in that spirit and tone before the Senate. I but do the Senator justice when I say that he has presented the question with marked ability and clearness; and I am inclined to think that the best view of the subject has been presented to-day which we shall have from the Senator's side.

I should not utter a word, but for the fact that the Senator has misapprehended my meaning and my position on one or two points, and I deem it due to myself to restate my views on those points, in order that he, the Senate, and the country, may see what the true position is. I acquit him of any intention to misstate; there was only a misconception. This may have been occasioned by my own fault, as I spoke rapidly, without preparation, and had no opportunity to revise the report of my speech. The Senator is under a misapprehension in supposing that I have assumed it to be a fatal objection to the admission of a State into this Union that there was no enabling act giving the consent of Congress in advance to the formation of a constitution. I took no such position.

The Senator is also mistaken in supposing that I took the ground that it was a fatal objection that the constitution was not submitted to the people before being sent to Congress for acceptance. I did not assume that position. My ground was this: the regular mode of proceeding is by an enabling act, and if the Territorial Legislature proceed to call a convention without first having the assent of Congress to do so, it is irregular, but not so irregular that it necessarily follows their constitution cannot be accepted. I argued and cited the opinion of the Attorney General in the Arkansas case, to show that, although a convention called by a Territorial Legislature without the previous assent of Congress, was irregular, yet it was not an unlawful assemblage, but was a body of men having a right to petition under the Constitution of the United States, and that having been assembled in convention, more force ought to be given to the mode of assemblage, but that it was not a constitutional body, authorized to institute government. In other words, I contended that a convention, constituted in obedience to an enabling act of Congress previously giving assent, is a constitutional body of men, with power and authority to institute government; but that a convention assembled under an act of the Territorial Legislature, without the assent of Congress previously given, has no authority to institute government. It has power to petition; it may put its petition in the form of a constitution; and when it comes here we are at liberty to accept or reject that petition.

This was my position in regard to the effect of an enabling act. I then went on to show that, there having been no enabling act passed for Kansas, the Lecompton convention was irregular. I argued that it was not an unlawful assemblage, but might present a petition to us in the shape of a constitution, which we should be at liberty to accept or reject, as we pleased. It was a convention authorized to petition, but not to establish or institute government.

I was aware that in the history of this Government some new States had been admitted without the passage of an enabling act by Congress in the first instance. I must be permitted, however, to spoil the effect of one or two of the Senator's cases—those upon which he dwelt with the greatest pleasure and most satisfaction to himself. He tells us there was no enabling act for Michigan. If the Senator will look back into the history of Michigan, he will find that the authority existed under the old ordinance of 1787. That ordinance, which was the organic act of Michigan, provided that the Northwestern Territory should be divided into not less than three nor more than five States, and each of those States was, by the ordinance, authorized to be formed and admitted into the Union when it should have sixty thousand inhabitants. Thus an enabling act was incorporated into the ordinance of 1787 for the five northwestern States. This is the reason why it was not necessary that there should be an enabling act for Michigan, nor for Ohio, nor for Indiana, nor for Illinois, nor for Wisconsin.

Next, with regard to Tennessee. The Senator quotes the names of Washington and Jackson—names that raise a thrill of patriotic feeling in the bosom of every American when they are mentioned, and to whose example we should, of course, yield the tribute of our approbation. How was it with Tennessee? The Senator says it was the first new State admitted without an enabling act. Tennessee, when cut off from North Carolina and formed into a Territory known as the Southwestern Territory, was organized into a territorial government by an act of Congress, which extended to it all the provisions of the ordinance of 1787, except the slavery clause. Thus, the territorial organic act of Tennessee contained within itself an enabling act, declaring that the people of Tennessee should have authority to form a constitution and State government whenever the Territory should have sixty thousand inhabitants. Being thus authorized, the Legislature of Tennessee took steps to find out when they had the sixty thousand inhabitants. When they ascertained that fact by a census, they called a convention to form a constitution. When they applied to Congress for admission, President Washington, in that beautiful letter which the Senator read, referred to the fact that in the act organizing the Territory of Tennessee there was an enabling clause, guarantying to that Territory the right to come into the Union whenever

it should have sixty thousand inhabitants. The Governor of the Territory having furnished the evidence showing that there were then sixty thousand inhabitants in Tennessee, according to the census, that people had a right to come into the Union on an equal footing with the original States. These facts dispose of the alleged example of Washington and Jackson, for they show that in the very case in which both acted, the assent of Congress had been previously given.

I am aware that in the Florida case and in other cases there was not an enabling act in the first instance. The rule upon which we acted was, that, although this was an irregularity, it might be waived or insisted upon according as we thought public policy and public duty required. I took that ground in my speech last week. I said further that, where an enabling act had been passed and a convention had been organized in the manner therein provided for, it was a constitutional convention empowered to institute government; and hence stood on a different footing. That distinction has been clearly taken, elaborated, and established by the Senator from Missouri in his speech. If he is right and I am right in this argument, it follows that the convention which met at Lecompton and formed a constitution was not a body properly constituted and empowered to institute a government, for the reason that it had not the previous authority of Congress, but was merely an assemblage of citizens regularly collected for the purpose of petitioning for a change of government from a territorial to a State government, and when that petition comes here we shall be at liberty to accept it or to reject it—to dispose of it as we may see fit.

Again, sir; the action of the convention shows, in my judgment, clearly, that they took the same view of the subject; for I must still insist that the convention did not assume that they had a right to institute government by virtue of the power which they possessed, but only to frame a constitution to be submitted to the people, and go into operation when ratified. The Senator thought I was mistaken in this. Let us refer to the record and see which of us is mistaken. The sixteenth section of the schedule provides:

"This constitution shall take effect, and be in force, from and after its ratification by the people, as herein before provided."

If not ratified it is to be void; if ratified it is to take effect from that time, and by virtue of that ratification. This clearly shows that the convention did not claim to be a body empowered to institute government, but simply a body authorized to frame a constitution in the shape of a petition, and to pray for its acceptance by Congress. That was the distinction.

Again, in the seventh section of the schedule we find:

"Before this constitution shall be sent to Congress for admission into the Union, as a State, it shall be submitted to all the white male inhabitants of this Territory, for approval or disapproval as follows:

It then goes on to give the form of the vote, "constitution with slavery," or "constitution with no slavery;" but before it can be sent to Congress the schedule says it shall be submitted for approval or disapproval. Can it be said, in the face of this language, that the convention declared the constitution in force without submitting it to the people? Can it be said that the constitution can ever take effect, unless ratified by a vote of the people? If I can understand the plain meaning of language which appears to be unequivocal, it is not susceptible of doubt that the constitution is referred to the people for acceptance or rejection, and that whatever validity or vitality it is to have, will be received from the people's ratification. If I am right in this position it brings me back to the old point, that the submission is such as not to give an opportunity for a fair vote on the slavery or any other question.

I come next to the position which I assumed with reference to the submission of a constitution for ratification. I did not contend that a constitution might not, under any circumstances, be put in operation unless submitted to the people for ratification. I said before, and I say now, that the constitution must be the act and deed of the people of Kansas; it must embody the will of the people of Kansas; no constitution should be received by Congress, and none can fairly be considered republican which does not embody the will of the people who are to be governed by it, and is not formed by their act. Having assumed, as an essential fundamental principle, that the constitution must embody the will of the people, the next question is, what is the best and most appropriate mode of ascertaining that will? Upon that point I concur with the President of the United States in his message, that the best mode is to refer it to the people for their acceptance or rejection by a fair vote. The principle being that it shall embody the will of the people, its submission to a popular vote is only a means of ascertaining a fact, which fact, namely, that it embodies the will of the people, gives it vitality, and makes it an appropriate constitution. I regard the argument of the President of the United States in favor of that mode of ascertaining the people's will as conclusive. The President's argument is, that delegates represent districts, and a majority of the delegates may represent a minority of the people, in consequence of some being elected by large majorities and others by small majorities; hence the President says a delegate election is not a fair test, but you must refer it to a vote of the whole people in order to ascertain the vital, the fundamental, the cardinal point whether or not the constitution is the embodiment of the will of the people. I advocate submission, as a means of ascertaining an end, not as a principle. I do not say that there could be no possible case in which I would not accept a constitution without its having been thus submitted. Suppose, for instance, a constitution had been formed by delegates, and there was not a murmur against it, not a protest, not the slightest reason to believe that anybody dissented from it, and the only question in dispute was the sufficiency of the population, I am not certain but that I should waive the irregularity, and take it for granted that such a constitution did embody the will of the people. If I should accept it on

such terms, it would be because there was satisfactory evidence that it was the will of the people. That will embodied in the constitution is the cardinal principle which is, or should be, a *sine qua non* in the establishment of governments for the admission of a new State.

This is the point of difference between the Senator from Missouri and myself. As he evidently misconceived my meaning on the matters to which I have referred, it has seemed to me to be due to him to restate my views, especially as he has treated the subject with a candor and courtesy that deserve to be followed and imitated. Certainly they will leave their impression on me in conducting discussions with him. I shall endeavor to profit by the example he has set this day in the mode of debate.

Mr. GREEN. I am somewhat surprised at the position taken by the honorable Senator from Illinois. He undertakes to prove that the State of Michigan was authorized to form a constitution by an enabling act, and this by a process of reasoning which I had not expected from him. He undertakes to prove it by the ordinance of 1787, which contained a provision that the Territory should be divided into not less than three and not more than five States. So far as this division is concerned, he is well aware of the fact that it has been violated. The Territory is made into more than five States; but does the ordinance give authority to the people of a Territory to form a constitution? Does it convey from Congress to the people authority to create a government? He says yes. Congress did not so consider when they passed an enabling act for Ohio. Congress did not so consider when they passed an enabling act for Indiana. Congress did not so consider when they passed an enabling act for Illinois, the gentleman's own State. Four out of the five States in the Northwest Territory formed their constitutions only after enabling acts had been passed by Congress.

But I propose to show that, if that process of reasoning be submitted to prove the existence of an enabling power to create a State government for Michigan, it exists in Kansas in all the perfection it ever possessed in Michigan. There was, says the Senator, an enabling act in the case of Michigan, because the ordinance of 1787 said the people, when they numbered sixty thousand, should be entitled to form a State government. Now the Louisiana treaty, by which the United States acquired Kansas, contains similar provisions, and the law of Congress, passed to give effect to that treaty when the United States took possession of the Territory, contains an express stipulation to that effect. The opinion of the Attorney General in relation to Arkansas, which the Senator read, is as follows:

"The treaty by which Louisiana was ceded to the United States, though undoubtedly, for many important purposes, a part of the supreme law, must, therefore, be laid out of the present question. It is true that the third article 'imposes on the United States, as a nation, the duty of incorporating the inhabitants of the ceded territory into the Union of the United States,' and of admitting them as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and, in the mean time, they are to be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess. And it must also be admitted that Congress, by the seventh section of the act of the 2d March, 1805, 'providing for the government of the Territory of Orleans,' have construed this article as pledging the faith of the United States to admit the inhabitants of Louisiana into the Union of the American States as an independent State, or States, and on the footing of the original States, whenever the proper number of free inhabitants shall be found therein."

Now, we have a treaty stipulation, which is the supreme law of the land, providing, prospectively, for the people of Kansas to form their constitution. We have a legislative construction by the Congress of the United States, guarantying that right to them. If the mere ordinance of 1787 conferred on the people of Michigan the power, (which is disproved by the acts of Congress in four cases out of the five in the Northwest Territory to which the ordinance of 1787 applied,) the same argument proves that an enabling act does exist for Kansas.

That is not all. The Senator said he referred to it for the purpose of taking away one of the instances to which I referred with so much gusto. I did refer to it with pleasure; but he fails to take it away; or, if he does, he supplies an enabling act for Kansas; and he may take his choice of the positions. If he does not take it away, the argument I before made stands unanswered. If he does take it away, he proves the existence of an enabling act for Kansas, which is the very question we are talking about. He may take either horn of the dilemma.

He says I misconstrued him; that he did not mean to say this, that, or the other, was conclusive why we should not admit Kansas. I did not, I hope, represent him as saying that either *one* of those objections was conclusive why we should not; but he urged them as objections to the admission of Kansas, and I answered his objections. He did not say in his chain of argument that the want of an enabling act was conclusive why Kansas must be rejected, but it was one of the links of the chain, and I thought it best to break each link, one at a time. I broke the link of an enabling act, or tried to do so. I broke the link of previous submission of the constitution to the people, or tried to do it, and, as a conclusive example, I instanced his own State, the constitution of which was not submitted to the people. I have shown by examples in the Government that a large majority of the State constitutions were never submitted to the people before they were admitted as States, and, hence, I am urging no new doctrine, I am propagating no new theories. We stand upon the practices of our republican fathers, and but follow in the footsteps of George Washington and Andrew Jackson.

But the Senator says, when Territories have no enabling act, and the constitution has not been submitted to the people, Congress may, or may not, admit them into the Union as States. I understand him as taking that position. Very well. There is no physical compulsion that can be brought to bear in any case to compel Congress to admit any State. There is a moral obligation, and that appeals to us. I hold that that moral obligation exists not only as strongly, but, perhaps, forty thousand times stronger, in regard

to Kansas, than any State which has ever presented itself at our doors for admission. No armies could march to this Capitol, and compel Congress to admit Texas, California, Illinois, Missouri, or any other State. There is no physical compulsion on us to admit Kansas into this Union. There is no legal objection, there is no prudential consideration, why it should not be done. Is there not a moral obligation to do it? That is the question. That moral obligation exists as strongly in regard to Kansas, as it ever did in regard to Illinois: and if the constitution of Kansas has not been submitted, neither was the constitution of Illinois, neither was the constitution of Missouri; and I would be very unfair to Kansas if I sought to apply a rule and a principle to it that were not applied to my own State when it was admitted.

Missouri came and asked admission into this Union, having formed a State government in compliance with what gentlemen are pleased to call, in this latter day, an enabling act, which imparts, as I before remarked, no new power to the people. All it does is to give, in advance, the assent of Congress, which may be given subsequent to the formation of a constitution for admission. The one is as regular as the other; the one is as legal as the other, and the latter is the safer of the two; for, as the Senator admits, and as I contended, if Congress give the assent in advance, that State stands as an independent State, in spite of the Federal Union, and nothing but physical power can ever bring her into the Union, except her voluntary action in conjunction with your voluntary action.

But again: the Senator thinks I misapprehended him in regard to the submission of the constitution. If I make any blunders, I will take great pleasure in correcting them. I undertook to show that the mere technical phraseology of this instrument was not the subject to be determined. It was its legal construction, and that we, as judges or statesmen, must pass sentence on its purport and meaning. What is its purport and meaning? That but one single subject is submitted for the consideration of the voters; that the whole subject was before them when they voted for the members of the convention; that if they stayed away, they stayed away in their own wrong; that they did their duty when they voted for members of the convention; that that convention was as legal and regular as any that ever sat in the whole limits of this Confederacy; and that this one question submitted to them is presented to them from a mere consideration of propriety and policy, and not from any legal compulsion whatsoever. This was my position.

Now, is the fair construction of this clause of the schedule in accordance with the position I take; or is it in accordance with the position assumed by the Senator from Illinois? The seventh section of the schedule says:

"That this constitution shall be submitted to the Congress of the United States at its next ensuing session, and as soon as official information has been received that it is approved by the same, by the admission"—

For that is the only *approving* they have to do—

" of the State of Kansas as one of the sovereign States of the United States, the president of this convention shall issue his proclamation to convene the State Legislature at the seat of government within thirty-one days after publication. Should any vacancy occur by death, resignation, or otherwise, in the Legislature or other office, he shall order an election to fill such vacancy: *Provided, however*, In case of refusal, absence, or disability of the president of this convention to discharge the duties herein imposed on him, the president *pro tempore* of this convention shall perform said duties; and in case of absence, refusal, or disability of the president *pro tempore*, a committee consisting of seven, or a majority of them, shall discharge the duties required of the president of this convention."

Then comes the section marked "eleven," which has reference to the mode of submitting to the people of Kansas whether they will have slavery in the constitution, or whether slavery shall be stricken out of the constitution. It is in this language:

"Before this constitution shall be sent to Congress."

It never takes effect until the admission of the State by Congress. Before it shall be sent to Congress certain things shall be done. The question on which I intended to correct the Senator was, that the constitution, as the constitution of a State government, never is to take effect unless Kansas be admitted by Congress into the Union.

"Before this constitution shall be sent to Congress for admission into the Union as a State, it shall be submitted"—

What is to be passed upon? Let us see.

—"to all the white male inhabitants of this Territory for approval or disapproval, as follows:"

What is to be approved? It is submitted to them to be approved or not approved, on what point? Why, "as follows." What does follow:

—"The president of this convention shall, by proclamation, declare that on the 21st day of December, 1857, at the different election precincts now established by law, or which may be established, as herein provided, in the Territory of Kansas, an election shall be held, over which shall preside three judges, or a majority of them, to be appointed as follows: The president of this convention shall appoint three commissioners in each county in the Territory, whose duty it shall be to appoint three judges of election in the several precincts of their respective counties, *and to establish precincts for voting, and to cause polls to be opened at such places as they may deem proper in their respective counties*, at which election the constitution framed by this convention shall be submitted."

How?

"To all the white male inhabitants of the Territory of Kansas in the said Territory upon that day, and over the age of twenty-one years, for ratification or rejection, in the following manner and form."

The term "ratification" and the term "rejection" are both used, but to what had they reference? "For ratification or rejection in the following manner and form." It has reference to the only one thing submitted to them. What is that?

"The voting shall be by ballot. The judges of said election shall cause to be kept two poll books by two clerks by them appointed. The ballots cast at said election shall be indorsed, 'constitution with slavery.'"

Not "for constitution" and "for slavery." There is but one vote cast—not for two things. It is for one thing; the vote is cast "constitution with slavery," or on the other side, "constitution with no slavery." So that there is but one single point submitted to the people on which they can vote, or were intended to vote, by the mode in which

this question was submitted. I remarked on the word "ratified," that it did not mean the whole constitution should be ratified and fixed and determined, but that the people were to fix, settle, and determine that which had not been fixed, settled, and determined, to wit: whether there should be a clause sanctioning slavery in the constitution or not. The last section is as follows:

"SEC. 16. This constitution shall take effect and be in force from and after its ratification by the people, as hereinbefore provided."

Its ratification means settling and determining, as before remarked; but it is to take effect "as hereinbefore provided." It is provided that it shall not take effect until Kansas has been admitted by Congress as one of the sovereign States of the Union. The people of Kansas have never proposed, and do not propose, in this constitution to erect a government in opposition to Federal authority. They have been pursuing Federal authority from the inception of their movements down to the present period of time. It met the sanction of the local government; it met the sanction of the executive power, and they have thus been acting in conformity with the Federal Government. When thus finished, it says it shall not go into operation until admitted as a sovereign State. Do they propose to elect Governors and judges, who are to be sworn into office and administer the government in opposition to the Federal Government? Do they assume the sovereignty of the Territory embraced within their boundaries? Nothing like that, whatever. We must not stop on a simple phrase or a single sentence, but take the whole scope of it together, and give it a fair construction; not the construction of a critic who is hunting for something to which to find objection, but a fair, reasonable construction; and that construction is in strict conformity with what I have before stated it to be.

When the Senator says he wants a constitution that will reflect the will of the people, I respond to him as heartily, and say I want no other kind of constitution. I must say, however, that when his bill says to the people of the Territory they may fix this constitution in their own way, and they have seen proper to take a way he did not approve, he has no power to supervise them; unless, indeed, he is prepared to trample under foot the very principles asserted in that bill.

I have also asserted, and again repeat, that the people can act as effectually, and completely, through delegates representing them in convention, as in any other way. Who in this Government would rise and say that the presumption is, not that the laws passed by Congress are approved by the States and the people? Who would rise and say the presumption is that the laws of the State Legislatures afford no intendment that they emanate from the people? It is subversive of the whole representative principle; it strikes at the foundation of republican government in this great Confederacy. Even if another way be preferred and be believed to be most in accordance with what Democracy requires, still it is for the Territory and not for the Federal Government to decide.

Mr. DOUGLAS. The Senator from Missouri will not find an enabling act in the treaty with France. True, the treaty provides that the inhabitants of the territory ceded by France to the United States shall be admitted into the Union as soon as possible, according to the principles of the Federal Constitution—not when there shall be sixty thousand inhabitants, not when there shall be any particular number of inhabitants, but as soon as may be consistent with the principles of the Federal Constitution. Nor does it provide with what boundaries they should be admitted. We admitted the inhabitants of Louisiana, then those of Missouri, then those of Arkansas, then those of Iowa, until we had thus admitted all the inhabitants there were in the country acquired from France. There was waste country still left, but there was no time fixed by the treaty, no data laid down by which it could be determined when or how they should be admitted into the Union. Thus it has been reserved to Congress to determine when they may have the requisite population. It is for Congress to determine what shall be the boundaries. It is not for the people of a Territory to say authoritatively what boundaries they shall take. On the contrary, Congress has always reserved and insisted on the right of establishing the boundaries, and such is undoubtedly the case in the Kansas-Nebraska act.

Congress never intended that Kansas should necessarily have a right to come into the Union with her present boundaries; for the organic act expressly reserves to Congress the right to alter and divide the Territory, and attach parts of it to other Territories. In the enabling act which the Senate passed last year, we cut off about one third of the present Territory of Kansas, and provided for the admission of the remainder as a State. We never contemplated bringing her into the Union with the boundaries fixed by the organic act, and by the Lecompton constitution. Will it be contended that the Kansas-Nebraska bill contemplated bringing the whole of Nebraska into the Union as one State? Does that act authorize the people of Nebraska to form a constitution when they please, and to come into the Union with a territory eight times as large as New York? Certainly it was never the intention of that organic act to confer on the people of a Territory the authority of saying that they will come in when they please, with as few or as many inhabitants as they please, with such boundaries as they choose, absorbing the whole waste country of the United States, and making an empire instead of a State.

The meaning of the Kansas-Nebraska act was, that when the time should come for them to form a State government, they should be admitted into the Union with or without slavery, as their constitution might prescribe, and that they should be left perfectly free to decide on their local and domestic institutions for themselves; but there was no pledge, no authority given to them to form a State with the extended limits included within the Territory, nor to form a State at all until Congress should determine that they were authorized to form a State. It was for the very reason that the Kansas-Nebraska act did not con-

tain an enabling provision that President Pierce, in his message at the first session of the last Congress, recommended to Congress to pass an enabling act authorizing the people of Kansas to form a constitution when they should have the requisite population. The President said:

"This, it seems to me, can be best accomplished by providing that, when the inhabitants of Kansas may desire it, and shall be of sufficient number to constitute a State, a convention of delegates, duly elected by the qualified voters, shall assemble to frame a constitution, and thus prepare, through regular and lawful means, for its admission into the Union as a State. I respectfully recommend the enactment of a law to that effect."

This message proves that, in the estimation of President Pierce and his administration, in the beginning of 1856, the time had not then arrived for the admission of Kansas, because she had not the requisite population, and also that an enabling act was necessary to give her authority to proceed to form a constitution and State government. Now, sir, let us see how the Committee on Territories of the Senate that year understood it. Here is the response of the committee to the President's message:

"In compliance with the first recommendation, your committee ask leave to report a bill authorizing the Legislature of the Territory to provide by law for the election of delegates by the people, and the assembling of a convention to form a constitution and State government preparatory to their admission into the Union on an equal footing with the original States, so soon as it shall appear, by a census to be taken under the direction of the Governor, by the authority of the Legislature, that the Territory contains ninety-three thousand four hundred and twenty inhabitants —that being the number required by the present ratio of representation for a member of Congress."

Thus, the Committee on Territories in 1856 responded to the recommendation of President Pierce, and the Senate responded to the report by passing through the body a bill authorizing the people of Kansas to form a constitution and State government. This shows that I am not the only man who construes the Nebraska bill to mean that an enabling act is necessary before the right of admission into the Union becomes complete. I show you that the President of the United States, who approved the bill, the President who made it an administration measure, so understood it at the time, and so declared in his message. I show you that the Committee on Territories which drafted the Nebraska bill, so understood it at that time. I show you that the same Senate which passed the Nebraska bill by the votes of the identical Senators who passed that bill, thus construed it at the time.

It is too late now to say that neither the President who signed the Nebraska bill, nor the committee who reported it, nor the Democratic Senate who passed it, understood it. The evidence can be accumulated mountain high, that it was the true intent and meaning of the act, as we expounded it at the time, that the people should be left free to form their institutions in their own way up to the last moment of admission—not slavery only, but all local and domestic institutions in contradistinction to Federal or national institutions. They have as much right to vote on the banking system, the judiciary system, the taxation system, the school system, as they have to vote on the slavery question.

The Senator tells us that the Nebraska bill meant only the slavery question, because we here felt no interest in anything else. It may be that the people of Missouri felt no interest in anything else. It may be that the people of Illinois felt no special interest about the banking system or school system of Kansas. It may be that the people of Virginia did not care what sort of a taxing system Kansas might have; but does it follow that the people of Kansas did not care? The people of Kansas had an interest in the taxation system, in the school system, in the banking system, in the judiciary system, in the elective franchise. These local and domestic institutions were everything to them. We did not care about them. Why? Because they were none of our business.

The Senator says that I ought not to refer to these questions, because I have no right to a voice in them. True, I have no right to a voice in their local institutions, but the people of Kansas have; and it is my duty to see that they have a free and untrammeled expression of that voice upon all their institutions. I deny that you have a republican constitution unless that is done. A constitution forced on a people against their will is not a republican constitution within the spirit of our institutions. It is no argument to say that this constitution is an excellent one. You have no right to cram a good thing down the throats of the people of Kansas against their will. It strikes at the fundamental principles of liberty. This question between us is radical. It is whether that people shall be permitted to form their own constitution, and whether the constitution under which they are to live shall embody their will or not. It is not a matter of form whether the constitution shall be submitted to them. That is but one mode of obtaining the evidence of the fact of their will. The President says it is the best mode, and I agree with him, the principle being that their will is the great essential *sine qua non* before you can bring them into the Union as a State.

Then, Mr. President, the simple question comes back, shall that people have the authority to form and regulate their institutions to suit themselves? The Senator says we may admit them if we see proper, and ought to do so, in order to terminate the controversy. Sir, I will do anything that is right, anything that is just, in order to terminate this controversy. No man living is so anxious for its termination as I am. I will sacrifice everything but principle and honor, and my country, in order to close this controversy. But how are you to close it? You must close it on principles of eternal justice and truth, or it will not stay closed. You must terminate it on the principle of self-government, or the constitution under which the people are to live is not republican. No patching up, no system of trickery by which the majority are cheated by the minority, will settle this question. Instead of producing peace, that will only be the beginning of undue controversy. When the broad fact stands admitted before the world that this constitution is the act of a minority, and not of the majority, the injustice becomes the more manifest and the more monstrous. The only reason for not submitting the constitution fairly is, that it would be voted down

if it were submitted. This is an admission that it is the act of a minority, not of a majority. Do you expect that you will restore peace and quiet to the country by forcing upon a people a constitution which does not embody their will? I tell you that you will have to avail yourselves of the recommendations of the message to increase the Army, and to use the military power of this country if the majority is to be subjected to the oppression of a minority. I trust there will be no outbreak, no violence. I will use every influence, by counsel and exertion, to insure submission; but I fear the result if you shall use power to coerce a majority of four fifths into subjection to a minority of one fifth.

But, sir, we are told that they ought to submit, because they can easily get rid of this constitution. The President says they may change it immediately after their admission. Ah! how is that? The constitution formed at Lecompton, provides that it may be changed after the year 1864, by a convention called by two thirds of the Legislature. I hold it to be a principle of law, that when a constitution provides for its own change at a particular time and in a particular manner, that excludes all other times and all other modes. I undertake to say that any court in Christendom would thus construe this constitution. When it says that it may be amended at one time, it excludes all other times. When it says it may be amended in one mode, it excludes all other modes. Will you tell me that the Constitution of the United States can be changed by a town meeting, or a mass meeting, or in any other mode than that pointed out in the instrument itself? No, sir! There is no constitutional modes by which this constitution of Kansas, if once in force, can be changed before 1864. There is another mode—a revolutionary mode. It is by the Legislature first coming together, taking an oath to support the constitution, and then proceed to call a convention to change it, in violation of the constitution and of the oath. Suppose they should do this, and the convention thus called should make a constitution and establish a new government, and the old government should refuse to surrender the possession, who would be Governor—the one elected under the old constitution or the new? You would have two governments in operation at the same time, one under the old and the other under the new constitution, and you would call on the Army to decide between them.

The scheme is a scheme of civil war. It leads directly to war. If I ever voted for it, I should expect to vote also for an increase of the Army, and for supplies to the Army, to enforce it at the point of the bayonet. It means violence, or it means the subjection of the majority to the minority. I beseech Senators to pause before they commit themselves to so fatal a step. I beseech all to pause and see whether this is right or wrong, for on this matter we are free from party ties. The Senator from Missouri and myself agree that the President has not made it an Administration measure. We agree that he has not recommended it in his message. We agree, therefore, that every man on this floor is at liberty to go for or against it without changing his party ties or affecting his party relations. Why, then, can we not stop and pause before we rush on to a step that not only rends asunder the Democratic party, but threatens the peace and perpetuity of the Union itself.

It will not do to tell me that the President is in favor of it. Sir, I believe the President to be a frank, a bold, an honest man. I will not believe that he will make any measure a party one which he does not recommend in his message. I will not believe that he would ask his party to go for a measure to which he would not commit himself on paper. I will not believe that he wishes us to run our necks into the halter of disunion and civil war before he takes the lead and points the way. The absence of a recommendation in the message shows that no man can, consistently with the President's dignity of character, assert that he is in favor of this measure. Then I say, let us restore peace to the country by ignoring the irregular convention at Lecompton, by ignoring the irregular convention at Topeka, by passing an enabling act in proper form, authorizing the people to form a constitution and State government for themselves. Such an act will restore peace to the country in ninety days. In fact, the day you pass it everything will be quiet in Kansas.

The people of Kansas will then see that Congress is going to carry out in good faith the principle of self-government. They will see that Congress is going to allow them to have slavery, if they want it, and to prohibit it if they do not want it. They will see that Congress is going to allow them to make their own constitution and laws in their own way. The moment they discover that impartiality is to prevail, and justice is to be carried out, they will be content; all will be quiet; there will be peace at the North, peace at the South, peace in the Democratic party, peace throughout the whole country. I trust that we shall discuss this question in calmness, in good humor, and in a kind and respectful spirit, as we have discussed it to-day.

Mr. GREEN. I do not propose to notice the exhortation of the honorable Senator. It is only his argument and the points of difference between us that deserve investigation, and to them I shall direct my attention. He mistakes entirely when he assumes that I admitted that the slavery branch of this controversy must, of necessity, under the law, be submitted to the people. I said just the contrary. I said it was a question with the convention of the people of Kansas Territory. They were under no responsibility or obligation, legal or otherwise, to submit any branch of the result of their labors to a subsequent vote of the people at the polls; but I remarked that if they saw proper, if they deemed it a matter of propriety to submit that question, as it had been a matter of controversy, there was more propriety in submitting it as a separate question, for that was the only way to submit it in order to get a fair decision of that question and nothing else. That was my position.

But the Senator says that four fifths of the people there are against the constitution. He assumes this; he has no evidence of it; and I doubt his right to make the charge in the Senate. He says

that the only reason why the convention did not submit the constitution to the people, was because they said it would be voted down. Some individual may have said so. I do not believe it myself. I believe that it meets the approbation of a large majority of the people of Kansas Territory. All these charges are only so many pretexts gotten up for ulterior purposes, to keep up that speculation and that fanaticism to which the Senator, with his influence, makes himself an unwilling coadjutor; for I know he does not aim at that.

When he says that no people ought to have a constitution forced down their throats, and that when a majority are not in favor of it, that it is not republican, he utters a truism that nobody denies; and he must not expect to lead me from the real points between us, by any such assertions. If the non-submission of the constitution to the people of Kansas is forcing down their throats a constitution which they do not want, and if it be anti-republican, then Illinois came into the Union anti-republican, with a constitution forced down the throats of her people.

I refer to that for the purpose of proving the fallacy of his argument. It does not follow because the people have not voted on a question forty times that they have not been heard. They voted on it when they elected members to represent them in convention. How often would you have them repeat it? If this constitution was submitted to them now, perhaps they would raise the same objection again, and we should hear the Senator say, "do not force this down the throats of the people of Kansas;" and so it would go on *ad infinitum*, with no limit. The true policy of this Government has been, as I hold, to adhere to the legal presumptions. The legal presumptions are that the people speak and act on all such questions when they form their convention and shape the constitution; and the people may instruct their convention as they deem best; and even if they violate their instructions, the Senator from Illinois cannot step in between a representative and his constituents. It is still a question between them. We cannot interpose.

I had thought that non-intervention was to be the principle of action on the part of Congress, and that the Senate would not intervene. Will the Senator set himself up as a judge whether Mr. Calhoun, or any other member of the convention, did right or wrong? To his own masters he is responsible, and by their verdict he stands or falls. His constituency constitute the master, and not the Senate of the United States. Why shall we therefore review it? Why shall we call it in question? They have had every submission of the question that a majority of the States of the Union have had, and now to say, that, because they have not had more, it is anti-republican, coercive, forcing it down their throats, is to say that a majority of the States have been thus tyrannically dealt with—one of which States the Senator represents, another I represent, and another, the honorable Senator from Vermont [Mr. COLLAMER] represents, and another of them is the State of Florida.

So I might name more than seventeen out of the thirty-one States which never had a vote on their constitutions before they were admitted into the Union. Are they republican? Yes. Were they submitted to the people? Yes; but the people in those cases spoke through their representatives. Had the people of Kansas the same opportunity to speak through their representatives? Yes. Was the convention in Kansas as legal as it was in Illinois? Yes. Was it as regular—was it as fair? Was the qualification of voters as just and as reasonable? Yes. Wherefore, then, will Congress apply a rule in the one case that was not applied in the other? Wherefore will you assume that one is anti-republican and the other republican? that the one is a coerced measure, forced down the throats of the people, and the other perfectly fair, and just, and popular? No, Mr. President, it is a mere assumption.

More than that, when the gentleman says that the people ought to rule, there is not a Senator in this Chamber who dissents; but it is of no use to dwell on points of perfect agreement. Let us come to the points of difference. Do the people act through the convention, or is it possible that the people can act in no way except by mass meeting? It may be that the people of Kansas did not wish to undergo the expense, and excitement, and danger, and tumult, of an election. Ten thousand considerations may have entered into it, and we have every presumption that the people were as fairly heard and as fairly represented as in any other convention that ever sat in this Federal Union.

Such being the case, I hold that I have more legal evidence that this is the people's work, that this is the people's constitution, than he has to assume that four fifths of the people would vote it down. His is a mere assertion; mine is a legal presumption. Mine is in accordance with the principles of law, with the usage of constitutional representative government; his is the opposite in every particular. Judge ye, then, between us, whether I defend the people, constitutionally, justly, fairly, or whether I seek to trample down the voice of the people. The Governor of Kansas Territory told them "you ought to vote; if you have got the numbers, control i" If they had the numbers, is it not reasonable to suppose they would have voted? Knowing they did not have the numbers, they wanted to keep up a pretext for a revolutionary and insurrectionary measure, and that insurrectionary, rebellious portion of Kansas is to be reckoned as four fifths of the people of that Territory.

More than that, sir, the people of Kansas have this question submitted to them as a matter of propriety, not a matter of necessity, not a matter of compulsion. Kansas can come into the Union as a majority of the States have come in. Kansas has a republican form of government. As to the questions of boundary and of numbers, why bring them up at this late period of the discussion? On Wednesday last, when I thought the ingenious mind of the Senator had scanned the whole question from the beginning to the end, and had hunted up all the objections he deemed tangible and worthy of consideration, he said not one word as to the boundary of Kansas; he said not

one word as to the numbers of Kansas. Wherefore, then, refer to it now? To lead me from the point under consideration? No; but because, I suppose, he wished to name certain matters which Congress might consider if they deemed it proper to consider them. Nobody controverts that. This is not an attempt on the part of the Administration or of its friends to coerce the people. It is, however, an attempt on our part to sustain the will of the people. That will has been fairly and legally expressed. We have all the presumptions in that way, and we have none whatever against it.

But the honorable Senator brings out another objection. True, he does not claim the right to supervise the proceedings of the convention; but he is very fond of naming defects that the people ought to have an opportunity to pass upon; and, amongst others that he names, is the mode of amending the constitution. All I have to say is, that the Senator is mistaken. In all the sovereign, independent States in this Government, the people being organized—the people being political communities—there are two ways for the State to make a change. One is for the State, as a government, to make a change of its form of government. Its government is composed of its officers—a Senate, House of Representatives, Governor, and so on. The constitution generally points out a method by which the government may effect a change in the constitution. There is also an original power of change behind, superior to and overtowering that by which the people may call a convention, and this convention, acting in conformity with the constituted authorities, may be called regularly, as was that of Kansas, and form a constitution and adopt it themselves, or submit it as they please to the people.

Now, let us take the case of Kansas and exemplify. Four fifths of the people, says the Senator, are on his side. In other words, four fifths of them are opposed to the constitution. In the very first Legislature that meets there will be four fifths of the Senate and House, and the whole of the Governor, in favor of a convention. Four fifths of both Houses, and the whole Governor—because we cannot parcel him out—will pass a law calling a convention. They will make just such a constitution as they please, and four fifths of the people will ratify it, if you will have it submitted for a vote; and after that, those four fifths will elect another Governor, another House of Representatives, another Senate, and fill all the offices of State. I do not apprehend any conflict of authority. This thing has been done ten thousand times, to speak by mere way of hyperbole; it has been done an indefinite number of times. The question in the Rhode Island case was entirely different from this. It was there the people acting in opposition to the government. The initiative steps for a change of government were not taken by the government itself, and of that there was complaint. I do not pretend to go into the question whether that was rightful or wrongful. I have about enough points to consider now without lugging in unnecessary ones. I do say, however, that it has never been held, and will not be held by the Senator himself when he reflects on it, that if four fifths of the people of Kansas desire to change their constitution they cannot do it in three months if they please.

Mr. DOUGLAS. By revolution.

Mr. GREEN. A revolution instituted by the government itself, conducted by the government itself, a change effected in such a manner as does not conflict with the government. It was done in the Senator's own State. Was that revolution?

Mr. DOUGLAS. It was done in conformity with the constitution there, not in opposition to it.

Mr. GREEN. There is one part of the constitution of Kansas which is worthy of being considered, for it bears on this subject.

"All political power"—

Say the people of Kansas, speaking through their convention—

"is inherent in the people; and all free governments are founded on their authority, and instituted for their benefit, and therefore they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper."

That is a part of the constitution of Kansas. Surely, therefore, the regular government of Kansas can institute a proceeding which will result in the exercise of those inalienable and indefeasible rights in perfect and entire reformation of the constitution. There is no question on this point; there is no difficulty in it. It is a very little thing brought in as a makeweight.

Mr. DOUGLAS. At the desire of the Senator from Pennsylvania, [Mr. BIGLER,] I renew the motion to postpone the further consideration of this question until Monday next.

The motion was agreed to.